

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

GERMAN FIGUEROA-LOPEZ

Plaintiff,

v.

DR. MICHAEL HERBIC, SCI-Fayette
Medical Director, **DR. RAJINDER
MALHI, MARK JENKINS, LAURENE
DONNELLEY, JIM BRIGHT**, and
DANIELLE PANACH

Defendants.

2:23cv71

Electronic Filing

MEMORANDUM ORDER

AND NOW, this 21st day of June, 2024, upon due consideration of defendants Dr. Michael Herbik, Dr. Rajinder Malhi, Laurene Donnelley and Danielle Panach's motion to dismiss and the parties' submissions in conjunction therewith, IT IS ORDERED that [33] the motion be, and the same hereby is, granted in part and denied in part. The motion is denied to the extent it seeks to dismiss plaintiff's Eighth Amendment claim relating to deliberate indifference to serious medical needs predicated on the events surrounding plaintiff's post-surgery physical therapy. The motion also is denied as to the First Amendment retaliation claim against defendant Herbik. The motion is granted to the extent it seeks to dismiss the claims against Defendant Panach for failure to exhaust administrative remedies. The Clerk of Court is directed to terminate Defendant Panach as a party defendant. The motion is granted in all other aspects; and

IT FURTHER IS ORDERED that [44] the Motion to Dismiss filed by defendants Jim Bright and Mark Jenkins be, and the same hereby is, granted in part and denied in part. The

motion is denied as to the First Amendment retaliation claim against defendant Jenkins. The motion is granted in all other aspects.

Defendants' objections to the Magistrate Judge's Report and Recommendation are overruled. The standard of review demands no more than a short and plain statement showing the pleader is entitled to relief. What plaintiff must do is set forth a sufficient factual basis advancing a plausible claim for relief. He has done so with regard to the claims that survive the instant motions. He is not required to advance sufficient evidence to prove his claims at this juncture. And defendants' objections demanding that he do so seek to place a higher burden on plaintiff than the controlling standards of review require. Of course, this ruling is without prejudice to defendants challenging or re-raising any perceived factual or legal deficiencies in plaintiff's remaining claims at subsequent stages of the litigation.

The Report and Recommendation of March 8, 2024, as augmented above is adopted as the opinion of the court.

s/David Stewart Cercone
David Stewart Cercone
Senior United States District Judge

cc: The Honorable Kezia O. L. Taylor,
United States Magistrate Judge

Alexander R. Ferrante, Esquire
Joan E. Owhe, Esquire

(Via CM/ECF Electronic Mail)

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